

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-7302

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 76-7302

B

IRENE PANTCHENKO,

PLAINTIFF-APPELLANT

v.

C.B. DOLGE COMPANY, INC.,

DEFENDANT-APPELLEE



APPEAL FROM THE GRANTING OF

SUMMARY JUDGMENT IN

DISTRICT COURT OF CONNECTICUT

APPENDIX FOR APPELLANT

IRENE PANTCHENKO
BIG PINES ROAD
WESTPORT, CONNECTICUT
PRO SE, APPELLANT

KANTROWITZ, KANTROWITZ &
ABBAMONTE by
JONATHAN D. KANTROWITZ
&
DAVID M. ABBAMONTE
CO-COUNSEL FOR APPELLANT

BEST COPY AVAILABLE

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IRENE PANTCHENKO	:	CIVIL NO. B-74-251
	:	
VS.	:	U. S. Court of Appeals
	:	Docket No. 76-7302
THE C. B. DOLGE COMPANY	:	

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

(4)

B74 251

J. O. N.

Jury demand date: 7/18/74 by defendant

D. C. Form No. 106 Rev. U. S. Court of Appeals #76-7302

TITLE OF CASE

ATTORNEYS

IRENE PANTCHENKO

V.

THE C. B. DOLGE COMPANY

For plaintiff:

Frank Estes - w/d 8/21/75
Marsh, Day & Calhoun
955 Main St.
Bpt., Ct.
Tel: 368-4221-

Irene Pantchenko, pro se
Big Pines Road
Westport, Conn., 06880

Jonathan D. Kantrowitz & David M.
Kantrowitz & Kantrowitz Abbamonte
1188 Main Street
Bridgeport, Conn., 06604

For defendant:

Robert L. Julianelle
Schine, Julianelle, Karp & Bozelko
P. O. Box 5008
Westport, Conn. 06880

Adrian W. Maher
Kevin J. Maher
955 Main Street
Bridgeport, Conn. 06604

STATISTICAL RECORD

COSTS

DATE
1974

**NAME OR
RECEIPT NO.**

REC.

DISB.

J.S. 5 mailed

Clerk

6/28

Frank W.
Estes

\$15.00

7/8

Deposit

"

GF 100869

\$15.00

J.S. 6 mailed

Marshal

1975

1976

Basis of Action: Relief for un-
lawful employ-
ment practices - to provide
plaintiff with a suitable
reference. Civil Rights Act
(42 U.S.C. §2000e - 5(g)).

Docket fee

6/25

I. Pantchenko
APPEAL

\$5.00

Witness fees

Action arose at: \$50,000.00

Depositions

FILL

B 74 251 (5)

DATE	PROCEEDINGS	Date Judgment
1974		
6/28	Complaint, filed.	#1
6/28	Appearance of Frank W. Estes, Esq., entered for plaintiff.	#2
6/28	Motion for Appointment of a Person to Serve Process, filed, Deputy Sheriff Edwin S. Mak. ORDERED ACCORDINGLY, Markowski, C. M- 7/3/74	#3
6/28	Notice to Clerk, filed.	#4
7/1	Summons issued and together with attested copies of same, copies of complaint, endorsed Motion, handed to attorney for service by Deputy Sheriff Edwin S. Mak.	
7/5	Return of Service of Writ of Edwin S. Mak, Deputy Sheriff for Fairfield County, filed. (Summons, Complaint, Motion and Order) (Mr. H. W. Kiekel, Sec., Tres., C. B. Dolge Co., 7/3/74)	#5
7/18	Appearance of Robert L. Julianelle, Esq., entered for defendant.	#6
7/18	Answer, filed.	#7
7/18	Request for Jury Trial, filed by defendant.	#8
7/18	Placed on Trial List. Notice to Counsel re: Trial list sent this date.	
	15,581	
8/22	Motion for Consolidation (with Civ. 15,581), filed by plaintiff.	#9
9/10	Motion for Consolidation, endorsed: Motion granted by consent. Newman, J. M-9/10/74. Copies to counsel.	
10/25	Appearance of Adrian W. Maher, Esq., and Kevin J. Maher, Esq., entered for Defendant.	#10
1975		
5/27	Per Pre-Trial Cal. of J.ON. -Pretrial over to 6/25/75 w/15,581 (Consolidated cases) at 12:15 p.m.	
6/17	Plaintiff's Interrogatories and Requests to Produce, filed.	#11
6/25	Per Pre-Trial Cal. of J.O.N. - Pretrial held (with consolidated case 15,581).	
8/15	Interrogatories, filed by defendant.	#12
8/19	Plaintiff's Motion to Extend Time to Answer Interrogatories and Make Production until 30 days after new counsel have appeared or until 10/12/75, whichever shall occur first, together with Notice, thereof, filed.	#13
8/19	Motion of Frank W. Estes, Esq., to Withdraw Appearance as counsel for Plaintiff, filed, together with Notice, thereof.	#14
8/21	Mtn. to W/D(Estes), endorsed: Motion granted. Newman, J.M-8/21/75-N. Copies sent by N.	
8/19	Motion of Raymond W. Beckwith, Esq., to Withdraw Appearance as counsel for Plaintiff, filed, together with Notice, thereof.	#15
8/21	Mtn.to W/D(Beckwith), endorsed: Motion granted. Newman, J. M-8/21/75.N. Copies sent by	
8/21	Appearance of Irene Pantchenko, pro se, entered.	#16
	continued	

DATE	PROCEEDINGS	Date Judgm
1975		
8/26	Motion (Of Atty. Sikorsky) To Withdraw Appearance, filed.	
8/28	Motion To Withdraw Appearance (Sikorsky), endorsed: "Motion granted." copies to counsel. M-8/29/75.	
9/11	Answers to Defendant's Interrogatories and Request to Produce, filed by pltf.	
9/12	Plaintiff's Motion for Separation, filed. <i>See to: ... 1558 / n</i>	
9/16	Pltf.'s Motion for Separation, endorsed: Motion denied. Newman, J. M-9/17/75. Copies to parties. <i>and 9-15-75 w/ file</i>	
10/9	Appearance of Johathan D. Katrowitz, Esq., entered for plaintiff.	
10/23	Production, filed by Pltf.	
10/23	Answers To Interrogatories, filed by Pltf. <i>sent file 11-26-75</i>	
12/17	Appearance of David M. Abbamonte, Esq., entered for pltf. <i>In P.T. on Dec. 17, 1975</i>	
12/17	Pre-Trial Conference before Newman, J., held.	
1976		
2/10	Pltf.'s Motion to Compel Deft. to File Motions, filed. <i>Copy sent</i>	
2/12	Plaintiff's Motion to Compel, etc., endorsed: Pltf.'s Mtn. to Compel Filing of Motions, denied. Newman, J. Copies to counsel. <i>Copy to ... 15581</i>	
2/27	Deft's Motion for Summary Judgment, filed. <i>Copy to ... 15581</i>	
3/4	Pltf's Motion for an Extension of Time Within Which to File Pleadings, (30 days) filed.	
3/5	Pltf's Motion, endorsed: GRANTED. Zampano, J. (for extension) <i>Copy sent - a-100</i>	
3/29	Plaintiff's Brief in Opposition to the Defendant's Motion for Summary Judgment, filed. <i>sent 3-31-76 / J.O.N.</i>	
6/11	RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, filed and entered. Newman, J. Section § 2000e-2(a)(1), which deals with discriminatory acts by employers, contains no explicit provision making it unlawful for an employer to refuse to provide a reference for a person for future employment. Summary Judgment granted for the defendant. NEWMAN, J. M-6/14/76. Copies to all parties of record and TEC, MJB, RCZ, JON, JEL, AHL, FOE, U. Conn. Law Review.	
6/15	Judgment, filed and entered. Defendant's Motion for Summary Judgment granted and action is dismissed. Markowski, C. M-6/15/76. Copies to all parties of record.	
6/17	Pltf's Motion to Have Defendant's Answer to the Interrogatories of June 1975 Placed in the Record of B-74-251, filed.	
6/18	Pltf's Mtn. to Have Deft's Answer to Interrogatories of June 1975, etc., endorsed: Attached copy of Answer to Interrogatories shall be filed in Civil B-74-251. Newman, J. M-6/18/76-N. Copies to parties of record.	
6/17*	Answers to the Plaintiff's Interrogatories and Requests to Produce, filed. (6/17/76 per Order of J.O.N.) (filed July 17, 1975 in Civil No. 15,581)	
6/25	Plaintiff's Notice of Intention to Appeal dismissal of B-74-251, filed. Copies handed Mrs. Pantchenko for her records and Atty.	

(Continued on Page 2a.)

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(8)

JAN 15 4 50 PM '74
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IRENE PANTCHENKO,
PLAINTIFF

VS.

THE C. B. DOLGE COMPANY,
DEFENDANT

CIVIL ACTION NO.

B 74 251

COMPLAINT

1. This action arises and jurisdiction of this Court is invoked under the Provisions of § 76 of the Civil Rights Act of 1964 (42 USC § 2000e - 5) hereinafter referred to as the Act and 28 USC §§1337 and 1343.
2. Plaintiff is now and for many years has been a resident of the Town of Westport, County of Fairfield, and State of Connecticut.
3. The unlawful employment practices alleged herein were committed within the State of Connecticut and the employment records relevant to the unlawful employment practices alleged herein are maintained or administered within the State of Connecticut.
4. The defendant, The C. B. Dolge, Company, is an employer of approximately 100 persons, with a manufacturing plant located in the Town of Westport, County of Fairfield, and State of Connecticut.

5. On or about May 21, 1971, the plaintiff filed a charge with the Equal Employment Opportunities Commission charging that the defendant discriminated against her in the terms and condition of her employment on the ground, amongst other grounds, of sex.

6. Action was taken on this charge pursuant to federal statute, and the matter is presently before this Court as Civil Action 15,581.

7. The plaintiff was employed by the defendant from 1965 to and through January 20, 1971 as a chemist, and during such period the plaintiff was an excellent worker.

8. From the date of the filing of said charge with the Equal Employment Opportunities Commission to the present, the defendant has refused to give plaintiff a written reference, despite repeated requests, and has made disparaging and untrue oral statements concerning the plaintiff to persons with whom the plaintiff has sought employment.

9. Said refusal to give an honest, written reference is an intentional act on the part of the defendant in retaliation for the plaintiff having brought the aforesaid charge before the Equal Employment Opportunities Commission.

10. On or about November 9, 1973, the plaintiff filed a charge of discrimination for such retaliatory action by the defendant with the Equal Employment Opportunities Commission. A copy of said charge (Case File #TB04-0730) is attached hereto and made a part hereof, as Exhibit A.

pursuant to the Act. A copy of said letter is attached hereto and made a part hereof as Exhibit B.

11. Plaintiff has therefore instituted this action to obtain appropriate relief as provided in § 706 (g) of the Act (42 USC § 2000e - 5(g)).

12. As a result of defendant's actions as hereinbefore alleged, the plaintiff has been unable to secure gainful employment and has suffered great damage by the loss of wages and benefits.

Wherefore the plaintiff prays:

1. That this Court order defendant to provide plaintiff with a suitable written reference.
2. That this Court order defendant to pay plaintiff damages in the amount of \$50,000.00.
3. That the Court award plaintiff the cost of this action, including reasonable attorney's fees.
4. That this Court grant plaintiff such other or different relief as may be appropriate under the circumstances of this case.

Dated June , 1974.

THE PLAINTIFF

By FRANK W. ESTES
Frank W. Estes
Marsh, Day & Calhoun
955 Main Street
Bridgeport, Connecticut
368-4221

BEST COPY AVAILABLE

EXHIBIT B

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISTRICT OFFICE
150 Causeway Street
Boston, Massachusetts 02114

(617) 223-4525

April 10, 1974

Re: Irene Pantchenko vs.
C. B. Dolge Company
Westport, Ct.

CERTIFIED 296548

RETURN RECEIPT REQUESTED

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

In Case No. TB04-0730 before the Equal Employment Opportunity
Commission, United States Government.

YOU ARE HEREBY NOTIFIED THAT:

WHEPEAS, this Commission has not filed a civil action with respect to your charge as provided by section 706(F) (1) of Title VII of the Civil Rights Act of 1964, as amended, 42U.S.C. 2000e et seq; and,

WHEREAS, this Commission has not entered into a conciliation agreement to which you are a party;

THEREFORE, pursuant to 706(F) of Title VII, you may, within 90 days of your receipt of this Notice, institute a civil action in the United States District Court having jurisdiction over your case.

Should you decide to commence judicial action, you must do so within 90 days of the receipt of this letter or you will lose your right to sue under Title VII.

BEST COPY AVAILABLE

(12)

If you are not represented by counsel and you are unable to obtain counsel, the Court may, in its discretion, appoint an attorney to represent you.

Should you have any questions concerning your legal rights or have any difficulty filing your case in court, please call Mr. Daniel O. Steele, District Counsel, Boston District Office at 617-223-4720.

Sincerely,

Everett O. Ware

Everett O. Ware
District Director

STATE OF DISCRIMINATION

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

(13)

Case File No. TR04-0730

(PLEASE PRINT OR TYPE)

Name (Miss) PANTCHENKO TREV

Phone Number 223-2357

Address 516 PINES RD
ESTPORT

State CONNECTICUT

Zip Code 06880

DISCRIMINATION BECAUSE OF: (Please check one)

or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☐

RETALIATION

Discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship. If more than one, list all.

B. DOICE CO

Address 516 PINES RD
ESTPORT

State CONN

Zip Code 06880

(List all parties if any)

Filed this charge with a state or local government agency?

Yes ☐

No ☒

Charge is against a company or a union, how many employees or members?

Under 25 ☐

Over 25 ☒

Recent date on which this discrimination took place: Month July Day 1 Year 73

What unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

HAVE PREVIOUSLY FILED COMPLAINT
IN EEOC AND C.A. DOICE CO IS
RETIATING BY GIVING ME BAD REFERENCE
THE REFUSES TO REPLY TO THE IN-
QUIRY OF THE PROSPECTIVE EMPLOYER
WIKITUNG.

I affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

-73

LUDWIG PANTCHENKO

(Sign your name)

and sworn to before me this 7th day of November 1973

[Signature]

(Name)

[Signature]

(Title)

For you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to sign to.

(14)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IRENE PANTCHENKO,

Plaintiff

VS.

THE C. B. DOLGE COMPANY,

Defendant

*

*

*

*

*

*

CIVIL ACTION NO. 874 251

JULY 16, 1974

ANSWER

1. The Defendant denies paragraphs 1, 3, 8, 9, 11 and 12 (11 and 12 on page 3 of the Complaint) of the Complaint.

2. With respect to paragraphs 2, 10, 11 and 12 (11 and 12 on page 2 of the Complaint) of the Complaint, the Defendant has insufficient knowledge or information to form a belief and leaves the Plaintiff to her proof.

3. The Defendant admits paragraph 4 of the Complaint.

4. As to paragraph 5, the Defendant admits that a charge was filed with the Equal Employment Opportunities Commission. As to the remaining allegations of paragraph 5 the Defendant has insufficient knowledge or information upon which to form a belief and leaves the Plaintiff to her proof.

5. As to paragraph 6, the Defendant admits that the matter is presently before this court as civil action no. 15,581. As to the remaining allegations of paragraph 6 the Defendant has insuffi-

cient knowledge or information upon which to form a belief and leaves the Plaintiff to her proof.

6. As to paragraph 7, the Defendant denies the words "as a chemist". The remaining allegations of said paragraph 7 are admitted.

Dated July 16, 1974.

THE DEFENDANT

By
Robert L. Julianelle
SCHINE, JULIANELLE, KARP & BOZELKO
P. O. Box 5008
Westport, Connecticut 06880
226-6361

CERTIFICATION:

This is to certify that a copy of the foregoing was mailed, postage prepaid to: Marsh, Day & Calhoun, 955 Main Street, Bridgeport, Connecticut on this 16th day of July, 1974.

SCHINE, JULIANELLE, KARP & BOZELKO

16
AUG 15 8 12 AM '75

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IRENE PANTCHENKO,
Plaintiff

VS.

C. B. DOLGE COMPANY,
Defendant

CIVIL ACTION NO. B-74-251
CONSOLIDATED WITH
CIVIL ACTION NO. 15,581

INTERROGATORIES

AUGUST 14, 1975

The defendant requests that the plaintiff answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Please state the dates and the persons from whom the plaintiff requested a written reference as alleged in paragraph 8 of the Complaint.
2. Please state the dates and the persons to whom the defendant has made disparaging and untrue oral statements as claimed in paragraph 8 of the Complaint.
3. Please state exactly the content of the disparaging and untrue oral statements the defendant has made as claimed in paragraph 8 of the Complaint.
4. Please state the persons who allegedly made the disparaging and untrue statements claimed in paragraph 8 of the Complaint.

5. Please state the name and address of the place or firm the plaintiff has sought employment from as alleged in paragraph 8 of the Complaint.

6. Please state the specific person and his name and address with whom the plaintiff applied for employment as alleged in paragraph 8 of the Complaint.

7. Please specifically state the loss of wages and benefits the plaintiff claims on a weekly basis, and the method of computation as claimed in paragraph 12 of the Complaint.

8. Please state specific employment opportunities the plaintiff claims she was deprived of as a result of the defendant's alleged conduct.

9. Please state the name and address of all witnesses to the alleged misconduct of the defendant as claimed in the plaintiff's Complaint.

10. Please identify all statements from witnesses, whether written or recorded, of the defendant's alleged misconduct.

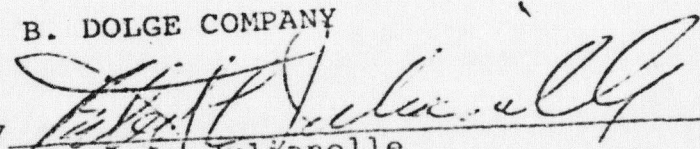
11. Please state the name and address of the person who has custody or possession of any written or recorded statements of witnesses.

12. Please state the name and address of all witnesses from whom any written or recorded statements have been taken.

THE DEFENDANT

C. B. DOLGE COMPANY

By


Robert L. Julianelle

Schine, Julianelle, Karp & Bozelko, P.C.
P. O. Box 5006
Westport, Connecticut 06880

18
FILED
SEP 11 4 39 PM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

* * * * *
IRENE PANTCHENKO, * CIVIL ACTION NO. B-74-251
Plaintiff *
VS. *
C. B. DOLGE COMPANY, *
Defendant * SEPTEMBER 11, 1975
* * * * *

ANSWERS TO THE DEFENDANT'S
INTERROGATORIES AND REQUEST TO PRODUCE

Question 1: Please state the dates and the persons from whom the plaintiff requested a written reference as alleged in Paragraph 8 of the Complaint.

Answer: On about January 19, 1971, seeing that I am going to be forced out from my employment with C. B. Dolge Co., I've asked my boss, Mr. R. J. Pokorny, to issue me a written reference. Mr. Pokorny has ignored the above demand, but asked me instead to sign a letter in which it would be stated that I am quitting C. B. Dolge Co. voluntarily as alleged in the blue strip which has been sent to my home. After I went in front of Labor Commissioner Arcudi, I was able to prove that I didn't quit voluntarily.

Immediate (not the main cause) of my separation from C. B. Dolge Co. was harassment of my person by the custodian of C. B. Dolge Co. during and after the working hours. Since the harassment of my person by C. B. Dolge custodian occurred even after my separ-

ation from C. B. Dolge Co., I have filed a complaint with EEOC in May of 1971. After EEOC investigation of my charge when I was calling up C. B. Dolge Co., I've been informed by the C. B. Dolge factory's secretary, Mrs. Pauline Jaubert, and also by C. B. Dolge's office receptionist, Miss Lucy Calise, that nobody of the company's officials was available to discuss the issuance of a written reference to me. I then was leaving a message with above request, but it remained unanswered. I then sent a registered letter to Mr. King Dolge on August 22, 1972, asking for a reference. I have a return receipt with Mr. K. Dolge's signature, dated August 22, 1972. On September 19, 1972, Mr. Dolge called me up and promised to send me a written reference next day. But instead, Mr. K. Dolge has sent to my home a letter, dated September 22, 1972, in which Mr. K. Dolge stated that provided you (meaning me, Irene Pantchenko) are not going to ask for an awful lot, I am going to provide you with the letter of recommendation (EEOC investigator had established that I was not paid equally for equal work in violation of Title VII of Civil Rights Law).

In June of 1973 I sent a letter to Mr. K. Dolge demanding a good reference and informing him that if he is not going to issue such a reference I will be obliged to ask my attorney to act.

Question 2: Please state the dates and the persons to whom the defendant has made disparaging and untrue oral statements as claimed in Paragraph 8 of the Complaint.

Question 3: Please state exactly the content of the disparaging and untrue oral statements the defendant has made as claimed in Paragraph 8 of the Complaint.

Question 5: Please state the name and address of the place or firm the plaintiff has sought employment from as alleged in Paragraph 8 of the Complaint.

Question 6: Please state the specific person and his name and address with whom the plaintiff applied for employment as alleged in Paragraph 8 of the Complaint.

Question 8: Please state specific employment opportunities the plaintiff claims she was deprived of as a result of the defendant's alleged conduct.

Answers to Questions 2, 3, 5, 6 and 8: Mr. Harry Maliga of Countronic Corporation, 4012-8th Avenue, Brooklyn, New York, kept calling Mr. K. Dolge about me, Irene Pantchenko, and then wrote to Mr. K. Dolge on July 5, 1973. Mr. Dolge then called up Mr. H. Maliga and told Mr. H. Maliga that he has no time to write and, therefore, he is calling Mr. H. Maliga. Mr. K. Dolge stated to Mr. H. Maliga that I, Irene Pantchenko, am a fine, dedicated chemist, but that I had a disagreement with my coworkers, but that I don't need to work because my husband makes a lot of money (which is untrue).

Remark by Irene Pantchenko: Employment agents kept calling C. B. Dolge Co. about me, but their calls were not acknowledged (like for instance, Hellen from "Helpers" in Bridgeport). Also, I've constantly applied for jobs with many other companies which were looking for persons like me by answering through post office boxes. I do not know if these people were contacting C. B. Dolge Co., and if Yes, what has been told to them. Also, in his reply to Court under the title "substituted Answer and Amended Special Defenses" filed in 1973 signed by the defendant's attorney, Robert L. Julianelle, stated that I was detrimental, destroyed myself, that I

have turned down the offers of raises, which is all untrue, and also in reply to suit B-74-251, the defendant's attorney, Robert L. Julianelle objected to the word "chemist" and also the defendant's reply, "Answers to the Plaintiff's Interrogatories and Request to Produce", filed July 17, 1975, stated that I, Irene Pantchenko, had been hired as a chemical technician, not as a chemist. The above statement has been signed by Mr. King Dolge and by attorney in ink without any typewritten name. These above statements are preventing me from getting State and Federal jobs but also going to college to which I have been offered to enroll into a PhD program with tuition waived.

Question 7: Please specifically state the loss of wages and benefits the plaintiff claims on a weekly basis, and the method of computation as claimed in Paragraph 12 of the Complaint.

Answer: My salary (including the cost of living raises and EEOC corrections of my salary) up to the time of issuance of written reference to me by C. B. Dolge Co., the loss of benefits (insurance, pension) plus the loss of interest on the above money. The whole total of the above amount should be doubled to pay me for the damages.

Question 9: Please state the name and address of all witnesses to the alleged misconduct of the defendant as claimed in the plaintiff's Complaint.

Question 10: Please identify all statements from witnesses, whether written or recorded, of the defendant's alleged misconduct.

Question 11: Please state the name and address of the person who has custody or possession of any written or recorded statements of witnesses.

Question 12: Please state the name and address of all witnesses from whom any written or recorded statements have been taken.

Answer: Mr. Erwin Theicz, 127 Randolph Road, White Plains, New York, Helen from "Helpers", Bridgeport, Toni Carr from Rita Personnel and some others.

Letter of Mr. Theicz to me, letter of Mr. H. Maliga to Mr. K. Dolge, letter of Mr. E. Theicz to Mr. H. Maliga, letter of Mr. Theicz to me, Irene Pantchenko, papers filed to the Court named "Substituted Answer and Amended Special Defenses" in which my "conduct, personality and behavior, as well as, her attitudes and relationships towards other employees resulted in her being a disruptive and potentially divisive element to the defendant which diminished her worth." signed by the defendant's attorney, Robert L. Julianelle, and the paper filed to the Court named "Answers to the Plaintiff's Interrogatories and Requests to Produce" which stated that I was hired as a technician, not a chemist (filed July 17, 1975).

Depositions of Mr. Robert James Pokorny (15 Red Coat Road, Westport), Mr. Alfred K. Dolge (Darien), Ameilia Falconer (Westport, Connecticut) have been taken.

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing answers has been mailed by registered mail to Robert L. Julianelle, Esq., Schine, Julianelle, Karp & Bozelko, P. O. Box 5008, Westport, Connecticut, 06880, and Adrian W. Maher, Esq., and Kevin J. Maher, Esq., Maher & Maher, 955 Main Street, Bridgeport, Connecticut, 06604 postage prepaid.

Irene Pantchenko
pro se litigant

readily apparent that they arise from the same "nucleus of operative fact" as the federal claims. United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966). Pendent jurisdiction therefore exists to support these claims. See Reichardt v. Payne, 396 F. Supp. 1010, 1019-20 (N.D. Cal. 1975).

After plaintiff left her job with the defendant, the company refused to provide her with written recommendations for other prospective employers, and that refusal has become the subject of a second lawsuit properly before this Court after plaintiff pursued her administrative remedies. It is alleged that this action by the defendant in itself constitutes a cognizable claim under 42 U.S.C. § 2000e-3, which prohibits an employer from discriminating against an employee "because he has made a charge . . . or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

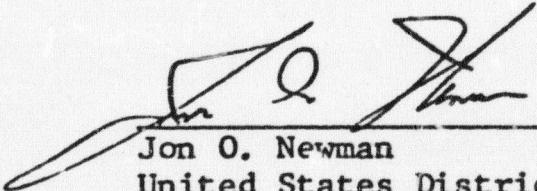
The defendant does not dispute that it refused to provide the plaintiff with a recommendation. Rather, it argues that this type of claim is not within the scope of 42 U.S.C. § 2000e-3. The section prohibits discrimination against "employees," and that term is defined in § 2000e(f) as "an individual employed by an employer." At the time that plaintiff filed with the EEOC she was no longer employed with the defendant, and therefore her claim does not fall within the literal language of the statute. See Dubnick v. Firestone Tire & Rubber Co., 355 F. Supp. 138, 141 (E.D.N.Y. 1973).

That such activity is not within the purview of Title VII is made clear by comparison with §§ 2000e-2(b) and (c), which explicitly make it an unlawful practice for an employment agency or a labor organization to refuse to refer a person for employment. However, § 2000e-2(a)(1), which deals with discriminatory acts by employers, contains no explicit provision making it unlawful for an employer to refuse to provide a reference for a person for future employment. Congress may well have determined that Title VII should remedy only the most immediate and virulent types of discrimination, and may have felt that the decision of an employer to provide a reference for an employee should be left entirely within the discretion of the employer. At the very least, Congress did not provide an explicit statutory cause of action for this kind of harm, and I decline to read one into Title VII. The motion for summary judgment on this cause of action will be granted.

Accordingly, summary judgment in Civil No. 15,581 is denied, but summary judgment will enter for the defendant in Civil No. B-74-251.

Dated at Hartford, Connecticut, this 10th day of June, 1976.

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Jon O. Newman
United States District Judge

V. With regard to Case No. B-74-251, the Defendant claims that there is no viable cause of action. The Plaintiff contends differently.

The Plaintiff bases the Courts jurisdiction in this matter on 28 USC §1337 and §1343 as well as 42 USC §2000-e-3 and 42 USC §2000-e-5.

The Defendant claims that 42 USC §2000-e-3 deals with employees and applicants for employment and not with former employees or employers. That cannot be so, because by necessity, many cases under this Act deal with former employees and employers. Bradington v. International Business Machines Corp. 360 F.Supp. 845 (1973). Even in Dubrich v. Firestone Tire & Rubber Company of California, 355 F.Supp. 138 (1973), the case referred to by the Defendant, the Plaintiff was an ex-employee bringing suit against a former employer. Therefore, the Plaintiff could maintain a suit under the EEOC Act. Furthermore, in Tipler v. E.I. Dupont de Nemours and Co., 443 F.2d.125 (6 Cir. 1971) the Sixth Circuit considered and rejected the contention that only employees have standing to sue under Title VII and the majority of other cases have held the same.

The Defendant claims that the Plaintiff has no legal right to ask for a reference. Under 42 USC §2000-e-5(g) and 42 USCA §2000-e-5(g) (the 1972 Amendment), the Court may grant the Plaintiff a reference.

42 USC §2000-e-5(a) states that if the Court finds that the Defendant has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the Court may order such affirmative action as may be appropriate and then the Act enumerates what the Court may do. 42 USCA §2000-e-5(g), the 1972 Amendment, adds the provisions which authorize the Courts to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate. See 42 USCA § 2000-e-5(g) with note to Subsec. (g) on page 357. Since the effective date of the 1972 Amendment is March 24, 1972 and by the reasoning stated in Section I of this brief and dealing with Section 14 of Pub.L. 92-261 and followed by the Davis case, supra, in Section I, the Plaintiff claims that the 1972 Amendment applies to this complaint and that the 1972

Amendment to Subsec. (g) allows the Court to order the Defendant to give the Plaintiff a reference. The Plaintiff also claims that even if the applicable section were 42 USC2000-e-5(g) (pre-Amendment), the provisions of that section would also allow the Court to give a reference.

All the Court decisions based upon affirmative action give the Court very broad remedial powers under this subchapter (2000-e-5(g)). Rosen v. Public Service Electric and Gas Co., CANJ1973, 477 F.2d.90. Bowe v. Colgate-Palmolive Co., C.A. Ind. 1969, 416 F.2d.711. Alexander v. Gardner-Denver Co., Colo. 1974, 94 S.Ct. 1011, 415 US36, 39 L.Ed.2d. 147. Humphrey v. Southwestern Portland Cement Co., D.C.Tex. 1973, 369F.Supp.832.

Certainly the granting of a reference would be a most vital remedy, not just in this case, but in most cases, since prospective employers will not hire without a good reference and the Plaintiff is entitled to one based upon her allegations, uncontested by the Defendant, that she was an excellent worker.

Therefore, if the Plaintiff's allegations are proven, the Court has authority to order a reference. EEOC uses the provisions of 2000-e-5(g) to advise prospective plaintiffs that they are entitled to a reference under Title VII.

The question of a reference is, however, a remedial one and really should not be treated under Summary Judgment. The question is whether the Plaintiff has standing to bring the action and Plaintiff has shown that the action can be maintained by an ex-employee against an ex-employer under the Act. It should be noted that the Defendant gives no legal basis for its intentions that the EEOC Act does not apply since the Plaintiff is neither an employee or applicant for employ.

Furthermore, the Plaintiff has properly complied with the Act by bringing this action based upon the fact that Plaintiff claimed sex discrimination and filed with EEOC (Para. 5) and that from the filing date of the charge that the Defendant failed to give a reference and the Defendant made disparaging

and untrue oral statements concerning the Plaintiff to persons with whom the
Plaintiff has sought employment (Para. 8) in retaliation for Plaintiff going
to EEOC. (Para. 9). These are questions of fact and comply with F.R.C.P. 8(a)
as well as 42 USC or 42 USCA 82000-e-3 and 2000-e-5 and therefore take this
complaint out of Summary Judgment.

This motion for Summary Judgment should be denied.

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Finally, the Third Count is also barred by the statute of limitations. Since there is no federal statutory basis for these claims the Connecticut statute of limitations must be applicable. Fratt v. Robinson, 203 F. 2d 627 (9th Cir. 1953). Even if the federal court were to have jurisdiction the statute of limitations for any negligent tort claim would be two years per force of Connecticut General Statute 52-584, but the Plaintiff did not file her Complaint until January 29, 1973, more than two years after she resigned from the Defendant's employ.

It is submitted that judgment should be entered against the Plaintiff on the Third and Fourth Counts of the Complaint due to lack of jurisdiction; and where applicable, the statute of limitations.

V. The Defendant moves that summary judgment be entered against the Plaintiff's civil action No. B-74-251 which has been consolidated with No. 15,581 for the reason that it does not state any claim for which relief can be granted.

The Plaintiff's claim is based on an alleged retaliation by the Defendant against the Plaintiff because of an alleged refusal of the Defendant to give the Plaintiff a written reference. Even if all of the Plaintiff's allegations are true, which the Defendant denies, there is no right of action. The claim must be based on 42 USC 2000-e-3 for it is the only section in the Act which attempts to proscribe retaliatory act. That section, however, no where requires, or even speaks of, employment references. No where in the Act is an employer, much less a

former employer, required to give a reference. Furthermore, the Act deals with employers and applicants for employment. The Plaintiff is neither an employee of the Defendant nor an applicant for employment by him. In the only reported case the Defendant could find, the Federal District Court for the Eastern District of New York discarded a claim such as the Plaintiff makes here. In that case, Dubnick v. Firestone Tire and Rubber Company of California, 355 F. Supp. 138 (E.D. N.Y. 1973) the Plaintiff attempted to qualify his venue by virtue of a claim that the Defendant prolonged the Plaintiff's unemployment because of unfavorable references in New York. The court said at page 141,

"Section 2000-e-3(a) plainly expresses the purpose and intent of Congress to proscribe discrimination by employers against 'employees' or 'applicants for employment' on grounds of race or color or because they have 'opposed' or exercised lawful procedural rights against such practices."

The court concluded that such claims as the Plaintiff made are "not additional causes of action under the Act."

The Defendant submits that the Plaintiff's claim as set forth in civil action No. B-74-251 is not a viable cause of action and summary judgment should be entered against her.